IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)

Description of case

Dated of decision: 24th of April, 2006

Writ Petition No. 948 of 2005 (M/S)

Manoranjan Saini
S/o Sri Tara Prasad
R/o Village Hempur Ismail
Tehsil Kashipur
District- Udham Singh Nagar ……Petitioner.

Versus

1. State of Uttaranchal
   through Secretary, Ministry of Local Bodies
   Civil Secretariat, Dehradun.
2. District Magistrate, Udham Singh Nagar.
3. Tehsildar, Tehsil Kashipur
   District- Udham Singh Nagar.
4. Block Development Officer
   Kashipur, Udham Singh Nagar.

……..Respondents.

Shri Pankaj Miglani, learned counsel for the petitioner.
Learned Standing Counsel for the respondents.

A.F.R. (Approved for reporting)

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Not approved for Reporting

(Hon. Mr. Justice Prafulla C. Pant.)

Dated: 24.04.2006

Note: Bench Reader will attach this at the top of first page of the judgment when it is put up before the Judge for signature.

Judgment Reserved

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Learned Standing Counsel for the respondents.

Hon'ble Prafulla C. Pant, J.

By means of this petition, moved under Article 226 of the Constitution of India, the petitioner has sought writ in the nature of certiorari, quashing the impugned order dated 02.08.2005 (Annexure-8 to the writ petition), whereby he has been removed from the post of 'Pradhan' of village Hempur Ismail, by the District Magistrate, Udham Singh Nagar.

2. Brief facts of the case, as narrated in the writ petition, are that in the year 2003, election of Gram Pradhans took place in the State of Uttaranchal. The petitioner filed his nomination for the post of Pradhan of

village Hempur Ismail, Tehsil Kashipur, District Udham Singh Nagar. It is alleged in the petition that petitioner complied with all the conditions as laid down in U.P. Panchayat Raj (Election of Members, Pradhans and Up-Pradhans) Rules, 1994. Under sub-rule 2 of Rule 15 of the aforesaid Rules, a person desirous to contest the elections from a reserved seat for Schedule Caste, Schedule Tribe or Backward Class, is required to make declaration to the effect that he belongs to the particular caste. The petitioner declared that he belongs to Saini community i.e. backward class and filed an affidavit to that effect. In the elections, petitioner was declared elected as Pradhan. However, in the month of May, 2005, one Krishan Kumar of village Hempur Ismail made a complaint to the State Government that the petitioner does not belong to Saini caste and the certificate issued in favour of his wife that she belongs to that caste is a fake one. In para-5 of the writ petition, it is alleged that on the receipt of said complaint, respondent No. 2 –District Magistrate, got preliminary enquiry done. In compliance of which, Tehsildar asked vide letter dated 10.06.2005 (copy Annexure-4 to the writ petition) to the Revenue Inspector to make a report on the complaint. Vide letter dated 17.06.2005 (copy Annexure-5 to the writ petition), Tehsildar, Kashipur, made a report to the Block Development Officer that certificate issued at serial No. 765 dated 15.10.1996 pertains to one Smt. Tulsi Devi, W/o Sri Bishan Ram belonging to Shilpkar community and not to Smt. Laxmi Rani W/o Manoranjan (petitioner). After said preliminary enquiry, Annexure-6 (termed as

show cause notice in the petition), was issued to the petitioner to which reply Annexure-7 was given by the petitioner alleging that he belongs to Saini caste, known as Kapali in West Bengal. It is further alleged in the petition that the petitioner is living in the village-Hempur Ismail for last 22 years. However, respondent No. 2 District Magistrate, exercising powers under Section 95 (1) (g) (iii-a) of U.P. Panchayat Raj Act, 1947, removed the petitioner from the post of Pradhan. Annexure-8 is copy of said order dated 02.08.2005. The order has been challenged by the petitoner on the ground that the same has been passed in violation of U.P. Panchayat Raj (Removal of Pradhans, Up-Pradhans and Members) Enquiry Rules, 1997. It is alleged in the writ petition that neither any Inquiry Officer was appointed, nor the procedure prescribed under aforesaid Rules, was followed. It is also alleged by the petitioner that no reasonable opportunity was afforded to him to show cause or to defend himself.

3. A counter affidavit has been filed on behalf of the respondents, wherein it has been admitted that petitioner did contest the election of Pradhan from village-Hempur Ismail against the seat reserved for Other Backward Caste, and won the election. However, the rest of the contents of the writ petition, as stated, are denied. It is stated in the counter affidavit that Kapali caste is not Other Backward Caste in the State of Uttaranchal. It is further alleged by the answering respondents that the impugned order, removing the

petitioner from the post of Pradhan, under Section 95 (1) (g) (iii-a) of U.P. Panchayat Raj Act, 1947, was passed in accordance with law. It is further stated in the counter affidavit that a due enquiry was conducted and reply of petitioner was also considered before the impugned order was passed and it is denied that the petitioner was not given an opportunity to defend himself.

4. I heard learned counsel for the parties and perused that affidavit, counter affidavit, rejoinder affidavit and annexures annexed thereto.

5. Admittedly, the petitioner contested the election for the post of Pradhan against the reserved seat for Other Backward Caste, and won the same. The dispute relates to the facts- (i) that whether the petitioner won the election by making false declaration and submitted the false certificate, and (ii) whether the respondent No. 2 complied the provisions of U.P. Panchayat Raj (Removal of Pradhans, Up-Pradhans and Members) Enquiry Rules 1997, or not, before passing the impugned order, removing the petitioner from the post of Pradhan.

6. Annexure-1 to the writ petition is the copy of the affidavit/declaration made by the petitioner that he belongs to Other Backward Class. Para-2 of the said affidavit/declaration, shows that the petitioner has made declaration that he is Saini by cast. As such, annexure-1 to the writ petition itself shows that the petitioner has

made a false statement by making a declaration that he belongs to caste Saini while in the writ petition he says that he is Kapali by caste i.e. Other Backward Caste in West Bengal. It has no where been stated by him that Kapali caste is a Backward Class in Uttaranchal. In support of his declaration, he has not filed Caste Certificate of his own instead he has filed Caste Certificate of his wife Smt. Lammi Rani, a copy of which is Annexure-2 to the writ petition. In Annexure-2 is is certified that Smt. Laxmi Rani is Saini by caste. It is settled principle of law that caste refers to the birth not to the status obtained by matrimony. As such, even if the wife of petitioner is Saini by caste, the petitioner cannot be said to be of that caste. Therefore, it is evident from the record that the petitioner did contest the election, making a false declaration that he is Saini by caste.

7. On behalf of the petitioner, it is argued that no charges sheet was given to the petitioner nor any enquiry was made in accordance with the U.P. Panchayat Raj (Removal of Pradhans, Up-Pradhans and Members) Enquiry Rules, 1997. Rule 3 of said Rules provides that a complaint must be accompanied by an affidavit. Rule 4 provides that preliminary enquiry shall be made before the formal enquiry. Rule 5 provides that the Enquiry Officer of a formal enquiry shall not be the same officer who conducted the preliminary enquiry. Rule 6 provides the procedure which requires the Inquiry Officer to draw distinct charge relating to substance of

imputations, made against the persons facing the enquiry. It further provides that the person against whom the charge sheet is served, may file his written statement in his defence on the date specified in the chargesheet. It further provides that if the charge is not admitted, the person facing the charge may inspect the record and if applies, he shall be served with the copy of the statement of the witnesses. Rule 6 further provides that the oral and documentary evidence may be taken and recorded in support of the charge by the Inquiry Officer before the person facing the enquiry is allowed to adduce his evidence in defence.

8. Annexure-6 to the writ petition is the copy of the chargesheet dated 13.07.2005 (which is referred as show cause notice by the petitioner in the writ petition). This document Annexure-6 to the writ petition, clearly shows that a specific charge has been framed against him that he contested the election and won it by making false declaration that he belongs to Other Backward Caste. It is categorically mentioned in this charge sheet that even the certificate filed by the petitioner of his wife, was found to have not been issued by Tehsildar. Thirdly, it is mentioned that under Section 95 (1) (g) (iii-a) of U.P. Panchayat Raj Act, 1947, the petitioner can be removed on the aforesaid charge. Lastly, it is mentioned in the charge sheet that within fifteen days from the service of the charge sheet, the petitioner has to make his replies to the District Magistrate. At the end of the charge sheet (Annexure-6 filed with the writ

petition), it is mentioned that the petitioner can inspect the evidence proposed against him. As such, from the record it is clear that a charge sheet was served on the petitioner. Not only this, Annexure-7 to the writ petition itself shows that the chargesheet was replied by the petitioner on 27.07.2005, in which it was stated by the petitioner that in West Bengal, Saini caste is known by Kapali. In view of said fact that the reply was also given by the petitioner before the respondent No. 2, who passed the impugned order on 02.08.2005, it cannot be said that the petitioner was not given any opportunity to defend himself or that the Rules contained in U.P. Panchayat Raj (Removal of Pradhans, Up-Pradhans and Members) Enquiry Rules, 1997, were not complied with. As to the preliminary enquiry initiated against the petitioner, annexures to supplementary counter affidavit filed by respondents No. 2 and 3 are required to be read. Annexure-1 and 2 to the supplementary counter affidavit dated 22.03.2006, show that statements of Manoranjan (petitioner) and his wife were recorded on oath. Annexure-3 to said supplementary counter affidavit is the copy of preliminary enquiry report dated 05.07.2005, submitted by Tehsildar, Kashipur to District Panchayat Raj Officer, Udham Singh Nagar in which it is mentioned that the petitioner and his wife are of Bengali community and they do not belong to Saini community.

9. Shri Pankaj Miglani, learned counsel for the petitioner drew attention of this Court to the case law reported in ***A.I.R. 2002 Allahabad 257 Hoti Lal Vs.***

State of U.P. in which it has been observed that newly inserted Sub-clause (iii-a) to Section 95 (1) (g) of U.P. Panchayat Raj Act, 1947, is ultra vires and contrary to Article 243 O of the Constitution. With due regard, view taken by the learned Single Judge of Allahabad High Court in aforesaid case, this Court differs from the aforesaid observation. Article 243 O of the Constitution reads as under:-

"243-O Bar to interference by Courts in electoral matters- *Notwithstanding anything in this Constitution,-*

(a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under Article 243-K, shall not be called in question in any Court;

(b) no election to any Panchayat shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the Legislature of a State."

10. In the opinion of this Court, what the aforesaid Article provides is this that delimitation of the constituencies for the purpose of Part-IX "THE PANCHAYATS' in the Constitution, and allotment of seats to such constituencies cannot be challenged in any court of law. The aforesaid Article further provides that an election to any Panchayat cannot be questioned except through an election petition present to such authority and in the manner provided under the law

made by said legislature. If any voter or a candidate or any such person wants to challenge the election of Pradhan, he is required to file an election petition under the provisions of U.P. Panchayat Raj Act, 1947 and Rules framed there under. But Clause (b) of the aforesaid Article 243-O cannot be stretched to mean that the Returning Officer or the authorities who were responsible for holding elections are required to file the election petition. Not only this, grounds of misconduct for removal from the post of Pradhan, Up-Pradhan or Member under Section 95 (1) (g) of the aforesaid Act, cannot be said to be hit by Clause (b) of Article 243-O of the Constitution.

11. Attention of this Court was also drawn on behalf of the petitioner to the principle of law laid down in ***Smt Sandhya Gupta Vs. District Magistrate 1999 (2) A.W.C. 913 and Chunmun Vs. District Magistrate 1998 (3) A.W.C. 1892.*** I have gone through both the said case laws. In the case of Smt. Sandhya (Supra), no preliminary enquiry was conducted nor the compliance of Rule 6 was made and the petitioner in that case was removed without serving the charge sheet. While in the present case, it is not so. Similarly, in the case of Chunnmun (Supra), the enquiry was conducted by a Junior Engineer, who was not competent to hold preliminary enquiry under Rule 4. in said case, District Magistrate exercised powers under the proviso to Section 95 (1) (g), merely on the basis of the report of Junior Engineer.

12. For the reasons as discussed above, this Court is of the view that since the substantial compliance of the provisions of U.P. Panchayat Raj (Removal of Pradhans, Up-Pradhans and Members) Enquiry Rules, 1997, has been made and it is clear from the record that the petitioner got elected to the post of Pradhan after making a false declaration that he belongs to Other Backward Class of Saini community, the writ petition is liable to be dismissed. Accordingly, the same is dismissed. No order as to costs.

(Prafulla C. Pant, J.)

Dt: 24th of April, 2006
Sweta